

MILLER BROTHERS OIL CORP.

IBLA 86-434

Decided December 8, 1987

Appeal from a decision of the Eastern states Office, Bureau of Land Management, rejecting the high bid in a competitive oil and gas lease sale. ES 035499 (Mich.).

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale if the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The bidder must be provided with an explanation of the factual basis of the decision sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Lease--Oil and Gas Leases: Discretion to Lease

When the Government rejects a competitive oil and gas lease high bid because the bid was less than its fair market valuation, the bidder must not only show that there is the lack of a rational basis for the decision or that BLM erred when formulating its fair market valuation, but must also establish that its bid represents fair market value in order to be awarded the lease.

APPEARANCES: Michael J. Morton, Land Manager, Miller Brothers Oil Corporation, Traverse City, Michigan.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Miller Brothers Oil Corporation has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated January 24, 1986, which rejected its high bid for parcel 33 (ES 35499) offered in the November 21, 1985, competitive oil and gas lease sale. Parcel 33 contains

135 acres in sec. 15, T. 20 N., R. 17 W., Michigan Meridian, in the Manistee National Forest. Appellant bid \$33 per acre (total \$4,455). The only other bid was for \$5.19 per acre.

On November 27, 1985, BLM sent appellant a notice of probable rejection of its bid stating that appellant's bid was lower than the presale estimate of value assigned to the parcel. BLM did not reveal the presale estimate. BLM allowed appellant 15 days from receipt of the notice to submit information supporting the bid, noting that 43 U.S.C. § 1701(a)(9) (1982) requires BLM to obtain fair market value for the disposition of public lands and resources. Appellant did not respond.

BLM then issued the decision on appeal stating:

The BLM appraised fair market value (FMV) for Parcel No. 33 is \$55 per acre. Miller Brothers Oil Corporation's bid was \$33 per acre. The appraised value is based on comparable leasing (sales) analysis as set forth in the Uniform Standards for Federal Land Acquisition.

The appraised FMV of Parcel No. 33 is based primarily on the bonus bid received for a geologically comparable Federal tract. The comparable competitive Federal tract (Parcel No. 17), offered for lease in the December 1984 Competitive Oil and Gas Lease Sale, received a high bid of \$100 per acre. The average evaluation of the tract (AEOT), which considers all qualified bids submitted for Parcel No. 17, was \$60 per acre. An adjustment was made in the AEOT of the comparable tract to account for the decline in the price of natural gas from December 1984 to November 1985 in order to arrive at the appraised FMV of \$55 per acre.

Additionally, Parcel No. 33 was offered for competitive leasing in the July 11, 1985, Competitive Oil and Gas Lease Sale (Parcel No. 44). At that time, a high bid of \$56 per acre was submitted by Miller Brothers Oil Corporation. However, the remainder of the bonus bid was not received within the allotted time frame, and therefore the one-fifth deposit and the right to the lease were forfeited. The FMV of the oil and gas interests of the tract apparently had nothing to do with the forfeiture. Nothing has occurred since the July 1985 sale to significantly change the FMV of Parcel No. 33. [1/]

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion

^{1/} These 3 paragraphs represent the rationale for rejection of the high bid for parcel 33 which was contained in a Jan. 9, 1986, memorandum from the Chief, Economic Evaluation, BLM Eastern States Office, to the Chief, Branch of Minerals Adjudication, BLM Eastern States Office.

that the amount of the bid was inadequate (Burton/Hawks, Inc., 85 IBLA 193 (1985)).

Therefore, based on the reasons stated above, the high bonus bid submitted for Parcel No. 33 is hereby rejected. A refund of the one-fifth deposit submitted will be authorized when this decision becomes final. [Emphasis in original.]

(Decision at 1-2).

In the statement of reasons for appeal to this Board, appellant asserts that BLM had no rational basis for its decision that the bid was inadequate. Appellant states that BLM did not take into account declining oil prices, lack of a market, or the cost of producing high sulfur gas or oil. Appellant also notes the presence of a dry hole to the north in the same section as parcel 33 and an absence of producing wells within 3 miles of the parcel. Appellant argues that BLM's failure to obtain competitive bids close to the estimate of value for parcel 33 in two sales, held in July and November 1985, also indicates that the BLM estimate of fair market value is excessive. Appellant asserts that fair market value of a lease is the amount a purchaser is willing to pay, although it contends its offer exceeds actual fair market value. Further, it asserts that it has no engineering, geological, or, geophysical data which would demonstrate that the parcel is worth any more than the amount it offered.

[1] The Secretary of the Interior has the discretionary authority to reject a bid for a competitive oil and gas lease if the bid is deemed inadequate. 30 U.S.C. § 226(b)(1982); 43 CFR 3120.5(a); MTS Limited Partnership, 95 IBLA 337 (1987); Michael Shearn, 87 IBLA 168, 169 (1985). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent fair market value for the parcel. E.g., Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., 80 IBLA 245, 246 (1984); Glen M. Hedge, 73 IBLA 377, 378-79 (1983); Coquina Oil Corp., 29 IBLA 310, 311 (1977). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value of the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., *supra* at 246; Glen M. Hedge, *supra* at 379.

The Board requires that BLM provide sufficient facts and analysis to provide a rational basis for its determination. E.g., Suzanne Walsh, 94 IBLA 249, 251 (1986); Suzanne Walsh, 83 IBLA 187, 188 (1984); Mesa Petroleum Co., 81 IBLA 194, 196 (1984). The Board has repeatedly stressed the need for BLM to document the reason for its determination. Id. In this case, BLM did not provide appellant with the presale evaluation for this parcel or information or calculations on which it was based when it issued the notice of probable rejection. Nevertheless, it did provide appellant notice of its intention to reject the bid and allowed appellant the opportunity to provide information in support of the bid. Appellant did not take advantage of that opportunity. The subsequent BLM decision included the fair market evaluation amount and provided a rational basis for rejection of the bid. See Southern Exploration Co., 97 IBLA 275 (1987).

In its analysis, BLM explains that its estimate of value of parcel 33 was based on a comparison of parcel 33 with another Federal tract offered for competitive bid. The tract to which BLM compared parcel 33 was parcel 17 offered by BLM in the December 1984 competitive oil and gas lease sale and for which BLM received a high bid of \$100 per acre. BLM stated that parcel 33 and parcel 17 are geologically comparable and that the average evaluation of the tract (AEOT) for parcel 17 was \$60 per acre. BLM allowed a \$5 adjustment in this AEOT to account for the decline in nature gas prices from December 1984 to November 1985 and established an appraised fair market value of \$55 for parcel 33. BLM also considered appellant's high bid of \$56 for this same parcel in July 1985. BLM did not find that any factor had significantly changed since July 1985 which would materially affect the value of parcel 33.

[2] Even where BLM fails to provide a rational basis for rejection or where the bidder shows error in the BLM evaluation, the bidder must also show that its bid reasonably reflects fair market value. George H. Fentress, 99 IBLA 184 (1987); Read & Stevens, Inc., 98 IBLA 268, 270 (1987). BLM made a reasoned, if limited, analysis of fair market value in this case. Appellant has submitted only a series of unsubstantiated assertions which fail to show error in the BLM decision. BLM did account for a decline in gas prices. Appellant has not shown that that adjustment was unreasonable. Appellant asserts that the lack of competitive interest in the parcel indicates a low market value. However, there is not necessarily a direct relationship between lack of bids and fair market value of a parcel offered at a competitive oil and gas lease sale. Factors such as limited financial resources, a lack of significant data, and the speculative nature of a tract, as well as intrinsic parcel value, can affect the number of bids submitted. A lack of competitive interest may offer little evidence of actual fair market value. George H. Fentress, *supra*; Edward L. Johnson, 73 IBLA 253, 256 (1983).

In addition to failing to show error in BLM's fair market value estimate, appellant has not demonstrated that its bid represents fair market value. Appellant merely states that it has no engineering, geological or geophysical data which show the parcel worth any more than \$33 per acre. That statement does not affirmatively establish that its bid reasonably reflects fair market value.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office, BLM, is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

James L. Burski
Administrative Judge

